

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 27-45 are pending in the application, with claims 27, 33, 39, and 45 being the independent claims. Claims 1-26 were previously canceled. Claims 27-44 are sought to be amended. New claim 45 is sought to be added. No new issues requiring further search or consideration by the Examiner are presented. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

***Rejections Under 35 U.S.C. § 101***

In section 3 of the Office Action, the Examiner maintained the rejections of claims 39-44 as allegedly being non-statutory. More specifically, the Examiner alleged that in the Applicants' specification, the computer useable medium can refer to a carrier wave or other signal. Applicants respectfully traverse these rejections.

Applicants first point to the first sentence in ¶ 11 of the Advisory Action dated 14 December 2006 in which the Examiner clearly stated that, "Applicant's amendment has overcome the 35 USC 101 rejection." The amendment that the Examiner is referring to in this statement is the amendment made to claim 39 in the Amendment and Reply Under § 1.116 dated 19 October 2006.

This statement was relied upon by Applicants in their Brief on Appeal Under 37 C.F.R. § 41.37 dated 17 August 2007. In their Appeals Brief, the Applicants addressed all

outstanding rejections not satisfied by previous actions. If the current § 101 rejection is allowed to stand, then the Applicants will have relied to their detriment on the statements of the Examiner in the Advisory Action. Thus, eliminating an opportunity to have traversed the rejection prior to the present Office Action.

Applicants further point to Section 706.04 of the M.P.E.P. which reads *inter alia*:

**PREVIOUS ACTION BY DIFFERENT EXAMINER**

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. >*Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).<

While Applicants concede that there has not been a change in the Examiner from the previous actions, Applicants respectfully submit that the above quoted section of the M.P.E.P is fully and appropriately applicable to situations involving the same examiner. Likewise, Applicants contend that holding the same examiner to this standard is both logical and implicit in Section 706.04. Applicants advance that it should follow that as to the "same" Examiner (as opposed to a "different" Examiner) "[f]ull faith and credit should be given to . . . action[s]" taken by the Examiner during the prosecution of all of the patent application. This is so that a logical flow of admission/rejection proceedings can be properly relied upon by both the Examiner and the Applicants. For example, Applicants relied on the Examiner's statement in the Advisory Action of 14 December 2006 that, "Applicant's amendment has overcome the 35 USC 101 rejection," and did not address this issue in their subsequent Appeals Brief. Yet, in the present Office Action the 35 U.S.C. § 101 rejection has been reapplied. For the reasons given above, Applicants believe that the rejections under

35 U.S.C. § 101 has been improperly applied, *supra*, as to claims 39-44 and respectfully request that these rejections be withdrawn.

***Rejections Under 35 U.S.C. § 103***

In section 5 of the Office Action, the Examiner maintained the rejection of claims 27-44 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,031,533 to Peddada *et al.* (hereinafter "Peddada") in view of the Antonioletti article "Load Sharing Across Networked Computers" (hereinafter "Antonioletti"). Applicants respectfully traverse these rejections.

Amended independent claim 27 recites (emphasis added):

A computer-based method of scheduling executions of programs on a plurality of computers comprising, at a third computer:

receiving a first notification from a first computer upon the installation of a first program on the first computer;

receiving a second notification from a second computer upon the installation of a second program on the second computer, wherein the operating system of the second computer is different from the operating system of the first computer;

updating a master schedule *in response to* the *first* and the *second notifications* and based on the first and the second notifications, wherein the updated master schedule indicates when the first program is to be executed on the first computer and when the second program is to be executed on the second computer; and

requesting the first computer to execute the first program and requesting the second computer to execute the second program according to the updated master schedule.

Each of independent claims 33 and 39 has been similarly amended.

Neither Peddada nor Antonioletti, alone or in combination, teaches or suggests each and every element of independent claim 27. The Office Action contends that Peddada teaches every element, save notification, of Applicants' independent claims. The Office

Action further contends that the notification element is found in the teachings of Antonioletti and that one of ordinary skill in the art would know to combine and modify as needed these references to obtain the result of Applicants' invention. Applicants respectfully disagree with these assertions.

Nowhere in Peddada is it taught that the distribution, execution, and/or management of the software occurs *in response to* any installation notification from any of the computers involved. Rather, Peddada deals with the installation, maintenance, and management of software applications at either the initiation of the system administrator or at the behest of an individual client, if new or updated software is available. The Office Action contends that, "*Peddada does teach a master server/scheduler initiating a software program installation of a first computer and that the master server maintains communication with the first computer so that the master server could provide management.*" (Office Action p. 4 ¶ 8). Applicants submit that this characterization is overbroad and misleading. While Peddada does disclose a master server, there is no indication that a scheduler, in the sense of Applicants' invention, exists. As stated earlier, installation, maintenance, and management of the distributed software application only occurs at the initiation of a system administrator (central control) or at the behest of a client (distributed control), but never *in response to* installation of a program on a computer(s).

Antonioletti fails to overcome the deficiencies of Peddada. The Office Action contends that the notification deficiency is solved by the master scheduler notification teachings of Antonioletti. (Office Action p. 5). The master scheduler notification of Antonioletti is more of a master allocator than a master scheduler, although allocation may, *arguendo*, include scheduling and notification. However, where the scheduler of claim 27 is updated "...*in response to* the first and the second notifications..." and "...the updated

master scheduler indicates when the first program is to be executed on the first computer and when the second program is to be executed on the second computer...," the scheduler of Antonioletti schedules execution of programs by a first or a second computer upon a notification request from those computers on any one of a plurality of computers other than the first and second computer. That is, Antonioletti does not schedule, receive notification, and execute programs, installed on a first and a second computer, on the first and the second computer. Rather, Antonioletti schedules requests (notifications) from a first and/or a second computer to be done on free computing power available (allocated based on periodic notifications from all available computers of the network) on one or more computers other than the first and/or the second computer. Hence, Antonioletti does not teach or suggest "updating a master schedule in response to the first and the second notifications and based on the first and the second notifications, wherein the updated master schedule indicates when the first program is to be executed on the first computer and when the second program is to be executed on the second computer" as recited in claim 27. Furthermore, as Antonioletti centers around the allocation of non-used computing power, Antonioletti does not teach or suggest, "requesting the first computer to execute the first program and requesting the second computer to execute the second program according to the updated master schedule." (Claim 27.)

Therefore, for at least the reasons stated above, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 27, and allowance thereof.

Independent claims 33 and 39 were rejected on a basis similar to the rejection of claim 27. Each of claims 33 and 39 has been amended in a manner similar to the amendment to claim 27 and, therefore, for at least the same reasons, Applicants respectfully request that each of claims 33 and 39 be reconsidered, the rejections withdrawn, and the claims allowed.

Likewise, each of claims 28-32, 34-38, and 40-44 are dependent upon independent claims 27, 33, or 39 and should be allowed for at least the same reasons and in further view of their respective features.

***New Claim***

Applicants have added new independent claim 45. Support for new claim 45 is provided throughout the specification including, but not limited to, pages 17-20 and figure 5C. New claim 45, *inter alia*, recites the feature of "updating a master schedule in response to the first and the second notifications and based on the first and the second notifications," wherein the notifications are generated by "receiving a first notification from a first computer upon installation of a first program" and "receiving a second notification from a second computer upon installation of a second program." As stated above, neither Peddada nor Antonioletti, alone or in combination, discloses, teaches, or suggests this feature. Therefore, new independent claim 45 is neither anticipated by nor unpatentable over Peddada or Antonioletti, alone or in combination.

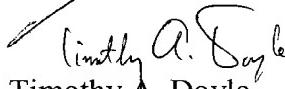
***Conclusion***

All of the stated grounds of rejection have been properly traversed. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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